

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.
v.	)	
	)	
TOTAL PETROCHEMICALS USA, INC.,	)	<b><u>COMPLAINT</u></b>
	)	
Defendant.	)	
_____	)	

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

**NATURE OF ACTION**

1. This is a civil action brought against TOTAL Petrochemicals USA, Inc. ("Defendant" or "TOTAL"), pursuant to Section 113(b) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(b) for alleged violations at the petroleum refinery operated by TOTAL at Highway 366 and 32<sup>nd</sup> Street in Port Arthur, Texas (the "Refinery").
2. Defendant has operated and/or continues to operate the Refinery in violation of various provisions of: 1) the New Source Performance Standards for petroleum refineries at 40 C.F.R. Part 60, Subparts A & J, promulgated pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b); and 2) the National Emission Standards for Hazardous Air Pollutants for Benzene Waste Operations at 40 C.F.R. Part 61, Subpart FF, promulgated pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d).
3. The United States seeks: 1) an injunction ordering Defendant to comply with the above statutes and the regulations promulgated thereunder; 2) civil penalties for Defendant's past

and ongoing violations; and 3) other appropriate relief.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the alleged violations occurred at the Refinery, which is located in this District.

### **NOTICE TO STATE**

6. Notice of the commencement of this action has been given to the State of Texas as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

### **DEFENDANT**

7. TOTAL, a Delaware corporation with its principle place of business in Houston, Texas, operates the Refinery.

8. TOTAL is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and applicable federal regulations.

### **STATUTORY AND REGULATORY BACKGROUND**

9. The Clean Air Act established a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. See Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

10. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing National Ambient Air Quality Standards ("NAAQS") for certain criteria air pollutants. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to

adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS.

11. In addition to establishing NAAQS and requiring SIPs to achieve compliance with the NAAQS, the Act requires, inter alia, 1) New Source Performance Standards for certain categories of sources of air pollution, and 2) National Emission Standards for Hazardous Air Pollutants.

12. For any violation of the CAA or its implementing regulations, the United States may commence a civil action pursuant to Section 113(b), 42 U.S.C. § 7413(b), for injunctive relief and civil penalties. Pursuant to Section 113(b), 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), civil penalties are not to exceed, for each violation: 1) \$25,000 per day for each violation occurring prior to January 30, 1997; 2) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 3) \$32,500 per day for each violation on or after March 15, 2004.

#### **Clean Air Act New Source Performance Standards**

13. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the EPA Administrator to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause, or significantly contribute to, air pollution which may endanger the public health or welfare.

14. Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires the EPA Administrator to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each category on the list published pursuant to Section 111(b)(1)(A). "New sources" are defined, at 42 U.S.C. § 7411(a)(2), as stationary sources, the

construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source.

15. Pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), EPA has identified petroleum refineries as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger the public health or welfare.

16. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), EPA promulgated New Source Performance Standards ("NSPS") for various industrial categories, including petroleum refineries. NSPS requirements for petroleum refineries are codified at 40 C.F.R. Part 60, Subpart J, §§ 60.100-60.109.

17. In accordance with 40 C.F.R. § 60.100(a) and (b), the provisions of 40 C.F.R. Part 60, Subpart J, apply to specified "affected facilities," including, inter alia, 1) Claus sulfur recovery plants that have a capacity greater than 20 long tons per day and that commenced construction or modification after October 4, 1976, and 2) all fluid catalytic cracking unit catalyst regenerators and fuel gas combustion devices that commenced construction or modification after June 11, 1973.

18. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants subject to 40 C.F.R. Part 60, Subpart J, with reduction control systems followed by incineration from discharging in excess of 250 parts per million ("ppm") by volume (dry basis) of sulfur dioxide at zero percent excess air. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants subject to 40 C.F.R. Part 60, Subpart J, with reduction control systems not followed by incineration from discharging in excess of 300 ppm by volume of reduced sulfur compounds and in excess of 10 ppm by volume

of hydrogen sulfide, each calculated as ppm sulfur dioxide by volume (dry basis) at zero percent excess air.

19. 40 C.F.R. § 60.104(a)(1) prohibits the burning in any fuel gas combustion device of any fuel gas that contains hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10.

20. 40 C.F.R. § 60.101(d) defines "fuel gas" as "any gas which is generated at a petroleum refinery and is also combusted. Fuel gas also includes natural gas when the natural gas is combined and combusted in any proportion with a gas generated at a refinery. Fuel gas does not include gases generated by catalytic cracking unit catalyst regenerators and fluid coking burners."

21. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, that apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60.

22. 40 C.F.R. § 60.11(d) requires that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

23. 40 C.F.R. 60.18(c) requires flares to be operated with no visible emissions except for periods not to exceed five minutes during any two consecutive hours.

24. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of a NSPS applicable to such source. Thus, a violation of a NSPS is a

violation of Section 111(e) of the CAA.

**Clean Air Act National Emission Standards for Hazardous Air Pollutants  
for Benzene Waste Operations**

25. Section 112 of the Clean Air Act, 42 U.S.C. § 7412, requires EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants ("National Emission Standards for Hazardous Air Pollutants" or "NESHAP").

26. Pursuant to Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1), and 40 C.F.R. § 61.01(a), benzene is a hazardous air pollutant.

27. Under Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d), EPA promulgated the Benzene Waste Operations NESHAP. Those regulations are set forth at 40 C.F.R. Part 61, Subpart FF, §§ 61.340 - 61.358.

28. Pursuant to 40 C.F.R. § 61.340(a), the Benzene Waste Operations NESHAP applies to petroleum refineries.

29. 40 C.F.R. § 61.05(c) prohibits an owner or operator of a refinery from operating an existing source subject to a NESHAP standard in violation of the standard, except under a waiver or exemption granted pursuant to the CAA.

30. 40 C.F.R. § 61.05(d) provides that no owner or operator of a refinery subject to a NESHAP standard may fail to report, revise reports, or report source test results as required in 40 C.F.R. Part 61.

31. Any waiver or exception for the Refinery from the Benzene Waste Operations NESHAP expired no later than July 1, 1994. Thus, the Refinery has been subject to the Benzene Waste Operations NESHAP from July 1, 1994 through the present.

**FIRST CLAIM FOR RELIEF**  
**(CAA/NSPS: Burning Fuel Gas in a Flaring**  
**Device in Violation of 40 C.F.R. 60.104(a)(1))**

32. The allegations in Paragraphs 1 through 31 are hereby realleged and incorporated by reference as if fully set forth herein.

33. Defendant is the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of one or more flaring devices located at the Refinery.

34. One or more of the flaring devices at the Refinery are "fuel gas combustion devices" as defined in 40 C.F.R. § 60.101(g), and "stationary sources" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

35. One or more of the flaring devices at the Refinery are "affected facilities" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a).

36. One or more of the flaring devices at the Refinery are "new sources" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

37. On numerous occasions from 1999 through the present, Defendant has burned in one or more of the flaring devices at the Refinery fuel gas that contained hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10, in violation of 40 C.F.R. § 60.104(a)(1) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

38. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

39. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2

and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), for each of the violations set forth above, Defendant is subject to injunctive relief and civil penalties not to exceed: 1) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 2) \$32,500 per day for each violation on or after March 15, 2004.

**SECOND CLAIM FOR RELIEF**  
**(CAA/NSPS: Discharging Gases from a Sulfur  
Recovery Plant in Violation of 40 C.F.R. § 60.104(a)(2))**

40. The allegations in Paragraphs 1 through 31 are hereby realleged and incorporated by reference as if fully set forth herein.

41. Defendant is the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of one or more sulfur recovery units ("SRUs") at the Refinery.

42. One or more SRUs at the Refinery are "Claus sulfur recovery plants" as defined in 40 C.F.R. § 60.101(i).

43. One or more SRUs at the Refinery are "stationary sources" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

44. One or more SRUs at the Refinery have a capacity of more than 20 long tons of sulfur per day.

45. One or more SRUs at the Refinery are "affected facilities" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a).

46. One or more SRUs at the Refinery are "new sources" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

47. One or more SRUs at the Refinery are subject to the General Provisions of the



NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J. One or more SRUs at the Refinery are subject to the emission limit set forth in 40 C.F.R. § 60.104(a)(2)(i).

48. On numerous occasions from 1999 through the present, Defendant has allowed gases containing in excess of 1) 250 ppm by volume (dry basis) of sulfur dioxide at zero percent excess air, or 2) 300 ppm by volume of reduced sulfur compounds to be emitted into the atmosphere from one or more of the SRUs at the Refinery by bypassing the SRUs' Tail Gas Unit, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

49. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

50. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), for each of the violations set forth above, Defendant is subject to injunctive relief and civil penalties not to exceed: 1) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 2) \$32,500 per day for each violation on or after March 15, 2004.

### **THIRD CLAIM FOR RELIEF**

#### **(CAA/NSPS: Failing to Operate and Maintain a Fluid Catalytic Cracking Unit Catalyst Regenerator in a Manner Consistent with Good Air Pollution Control Practice in Violation of 40 C.F.R. § 60.11(d))**

51. The allegations in Paragraphs 1 through 50 are hereby realleged and incorporated by reference as if fully set forth herein.

52. Defendant is the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of one or more fluid catalytic cracking

unit catalyst regenerators ("FCCUCRs") at the Refinery.

53. One or more FCCUCRs at the Refinery are "stationary sources" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

54. One or more FCCUCRs at the Refinery are "affected facilities" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a).

55. One or more FCCUCRs at the Refinery are "new sources" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

56. Continuously from at least 1999 through the present, Defendant's operation of one or more of the FCCUCRs at the Refinery has resulted in upsets that have caused the flaring of gases containing sulfur dioxide, hydrogen sulfide, nitrogen oxides, and/or volatile organic compounds.

57. The flaring described in the preceding Paragraph has resulted in the release of sulfur dioxide, hydrogen sulfide, nitrogen oxides, and/or volatile organic compounds into the atmosphere.

58. One or more FCCUCRs at the Refinery are subject to the requirement in 40 C.F.R. 60.11(d) that the FCCUCRs be operated in a manner consistent with good air pollution control practice for minimizing emissions.

59. Continuously from at least 1999 through the present, Defendant has failed to operate one or more FCCUCRs at the Refinery in a manner consistent with good air pollution control practice for minimizing emissions in violation of 40 C.F.R. § 60.11(d) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

60. Unless restrained by an order of the Court, these violations of the CAA and the

implementing regulations will continue.

61. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), for each of the violations set forth above, Defendant is subject to injunctive relief and civil penalties not to exceed: 1) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 2) \$32,500 per day for each violation on or after March 15, 2004.

#### **FOURTH CLAIM FOR RELIEF**

**(CAA/NSPS: Failing to Operate and Maintain a Sulfur Recovery Unit in a Manner Consistent with Good Air Pollution Control Practice in Violation of 40 C.F.R. § 60.11(d))**

62. The allegations in Paragraphs 1 through 50 are hereby realleged and incorporated by reference as if fully set forth herein.

63. Continuously from at least 1999 through the present, Defendant's operation of one or more of the SRUs at the Refinery has resulted in upsets that have caused the flaring of gases containing sulfur dioxide, hydrogen sulfide, nitrogen oxides, and/or volatile organic compounds.

64. The flaring described in the preceding Paragraph has resulted in the release of sulfur dioxide, hydrogen sulfide, nitrogen oxides, and/or volatile organic compounds into the atmosphere.

65. One or more SRUs at the Refinery are subject to the requirement in 40 C.F.R. 60.11(d) that the SRUs be operated in a manner consistent with good air pollution control practice for minimizing emissions.

66. Continuously from at least 1999 through the present, Defendant has failed to operate one or more SRUs at the Refinery in a manner consistent with good air pollution control practice for minimizing emissions in violation of 40 C.F.R. § 60.11(d) and Section 111(e) of the

CAA, 42 U.S.C. § 7411(e).

67. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

68. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), for each of the violations set forth above, Defendant is subject to injunctive relief and civil penalties not to exceed: 1) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 2) \$32,500 per day for each violation on or after March 15, 2004.

**FIFTH CLAIM FOR RELIEF**

**(CAA/NSPS: Failing to Operate and Maintain a Flaring Device in a Manner Consistent with Good Air Pollution Control Practice in Violation of 40 C.F.R. § 60.11(d))**

69. The allegations in Paragraphs 1 through 50 are hereby realleged and incorporated by reference as if fully set forth herein.

70. Continuously from at least 1999 through the present, Defendant's operation of one or more of the flaring devices at the Refinery has resulted in the flaring of gases containing sulfur dioxide, hydrogen sulfide, nitrogen oxides, and/or volatile organic compounds at its Port Arthur facility.

71. The flaring described in the preceding Paragraph has resulted in the release of sulfur dioxide, hydrogen sulfide, nitrogen oxides, and/or volatile organic compounds to the atmosphere.

72. One or more of the flaring devices at the Refinery are subject to the requirement in 40 C.F.R. 60.11(d) that the flaring devices be operated in a manner consistent with good air pollution control practice for minimizing emissions.

73. Continuously from at least 1999 through the present, Defendant has failed to operate one or more of the flaring devices at the Refinery in a manner consistent with good air pollution control practice for minimizing emissions in violation of 40 C.F.R. § 60.11(d) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

74. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

75. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), for each of the violations set forth above, Defendant is subject to injunctive relief and civil penalties not to exceed: 1) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 2) \$32,500 per day for each violation on or after March 15, 2004.

**SIXTH CLAIM FOR RELIEF**  
**(CAA/NSPS: Operating a Flaring Device with Visible Emissions  
in Violation of 40 C.F.R. § 60.18)**

76. The allegations in Paragraphs 1 through 50 are hereby realleged and incorporated by reference as if fully set forth herein.

77. One or more of the flaring devices at the Refinery are subject to the requirement in 40 C.F.R. § 60.18(c) that a flaring device may not be operated with visible emissions except for periods not to exceed five minutes during any two consecutive hours.

78. On numerous occasions from 1999 through the present, Defendant has operated one or more flaring devices at the Refinery with visible emissions for periods exceeding five minutes during two consecutive hours.

79. Unless restrained by an order of the Court, these violations of the CAA and the

implementing regulations will continue.

80. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), for each of the violations set forth above, Defendant is subject to injunctive relief and civil penalties not to exceed: 1) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 2) \$32,500 per day for each violation on or after March 15, 2004.

**SEVENTH CLAIM FOR RELIEF**  
**(CAA/NESHAP: Failing to Manage and Treat Benzene Wastes  
in Violation of 40 C.F.R. §§ 61.342 and 61.343-61.348)**

81. The allegations in Paragraphs 1 through 31 are hereby realleged and incorporated by reference as if fully set forth herein.

82. 40 C.F.R. § 61.342(b) requires each owner or operator of a facility subject to 40 C.F.R. Part 61, Subpart FF, and at which the total annual benzene quantity from facility waste is equal to or greater than ten megagrams per year (10 Mgs/yr) to manage and treat the facility waste pursuant to the requirements of 40 C.F.R. §§ 61.342 and 61.343-61.348.

83. Defendant is the “owner or operator” of the Refinery, within the meaning of 40 C.F.R. Part 61, Subpart FF, the Refinery is subject to the requirements of 40 C.F.R. Part 61, Subpart FF, and at all relevant times, the total annual benzene quantity from the Refinery's waste has been equal to or greater than 10 Mgs/yr.

84. From July 1, 1994 until at least 2002, Defendant failed to manage and treat Refinery benzene waste in compliance with the requirements of 40 C.F.R. §§ 61.342 and 61.343-61.348.

85. Each violation of 40 C.F.R. §§ 61.342 and 61.343-61.348 constitutes a violation

of 40 C.F.R. §§ 61.05(c) and 61.342(b) of the Benzene Waste Operations NESHAP and of the Clean Air Act.

86. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), and 69 Fed. Reg. 7121-27 (Feb 13, 2004), for each of the violations set forth above, Defendant is subject to civil penalties not to exceed: 1) \$27,500 per day for each violation between January 30, 1997 and March 14, 2004; and 2) \$32,500 per day for each violation on or after March 15, 2004.

#### **EIGHTH CLAIM FOR RELIEF**

##### **(CAA/NESHAP: Failing to Determine Annual Benzene Quantity for Each Waste Stream in Violation of 40 C.F.R. §§ 61.342(a) and 61.355(a))**

87. The allegations in Paragraphs 1 through 31 and 81 through 86 are hereby realleged and incorporated by reference as if fully set forth herein.

88. 40 C.F.R. §§ 61.342(a) and 61.355(a) require each owner or operator of a facility subject to 40 C.F.R. Part 61, Subpart FF, to determine the total annual benzene quantity of facility waste by summing the annual benzene quantity of each waste stream.

89. 40 C.F.R. §§ 61.342(a) and 61.355(a) also require each owner or operator of a facility subject to 40 C.F.R. Part 61, Subpart FF, to determine the annual benzene quantity for specified waste streams, including waste streams with a flow-weighted annual average water content greater than ten percent (10%) water, and waste streams that are mixed with water, or other wastes, at any time that such mixture has an annual average water content greater than ten percent (10%).

90. From 1998 through 2002, Defendant failed to calculate the annual benzene quantity for each waste stream at the Refinery with a flow-weighted annual average water content

greater than ten percent (10%).

91. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), for each of the violations set forth above, Defendant is subject to civil penalties not to exceed \$27,500 per day for each violation between January 30, 1997 and March 14, 2004.

**NINTH CLAIM FOR RELIEF  
(CAA/NESHAP: Failing to Submit Required Reports  
in Violation of 40 C.F.R. § 61.05(d) and § 61.357(d))**

92. The allegations in Paragraphs 1 through 31 and 81 through 86 are hereby realleged and incorporated by reference as if fully set forth herein.

93. 40 C.F.R. § 61.05(d) requires each owner or operator of a facility subject to 40 C.F.R. Part 61 to report, revise reports, or report source test results as required under Part 61.

94. 40 C.F.R. § 61.357(d) requires each owner or operator of a facility subject to 40 C.F.R. Part 61, Subpart FF, and at which the total annual benzene quantity from facility waste is equal to or greater than one megagram per year (1 Mg/yr), to submit certain information each year describing the nature, source, and amount of benzene wastes in each waste stream.

95. Defendant failed to submit for the Refinery the information required by 40 C.F.R. § 61.357(d) for the Refinery's operations in 1997 and 1998.

96. The omissions described in the preceding Paragraph constitute violations of 40 C.F.R. §§ 61.05(c), 61.355, and 61.357(d) of the Benzene Waste Operations NESHAP and of the Clean Air Act.

97. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), for each of the violations set forth above, Defendant is subject



to civil penalties not to exceed \$27,500 per day for each violation between January 30, 1997 and March 14, 2004.

**TENTH CLAIM FOR RELIEF**  
**(CAA/NESHAP: Failing to Make Proper Reports, Including Failure to Put All Waste Streams in Reports, in Violation of 40 C.F.R. § 61.05 (d) and 40 C.F.R. § 61.357(a))**

98. The allegations in Paragraphs 1 through 31 and 81 through 86 are hereby realleged and incorporated by reference as if fully set forth herein.

99. 40 C.F.R. § 61.05 (d) requires each owner or operator of a facility subject to 40 C.F.R. Part 61 to report, revise reports, or report source test results as required under Part 61.

100. 40 C.F.R. § 61.357(a) requires each owner or operator of a facility subject to 40 C.F.R. Part 61, Subpart FF, to submit a report each year that includes, inter alia, the total annual benzene quantity from facility waste determined in accordance with § 61.355(a), and a table identifying each waste stream having a flow weighted annual average water content greater than ten percent (10%) and indicating whether each such waste stream will be controlled for benzene emissions.

101. From 1998 through 2002, Defendant failed to identify each of the benzene waste streams at the Refinery having a flow-weighted annual average water content greater than ten percent (10%) in its reports submitted pursuant to 40 C.F.R. § 61.357(a) and (d).

102. From 1998 through 2002, Defendant failed to identify the total annual benzene quantity in the Refinery's waste determined in accordance with § 61.355(a) in its reports submitted pursuant to 40 C.F.R. § 61.357(a) and (d).

103. The omissions described in the preceding two Paragraphs constitute violations of 40 C.F.R. §§ 61.05(c) and 61.357 of the Benzene Waste Operations NESHAP and of the Clean

Air Act.

104. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table (1997), for each of the violations set forth above, Defendant is subject to civil penalties not to exceed \$27,500 per day for each violation between January 30, 1997 and March 14, 2004.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order TOTAL to comply immediately with the statutory and regulatory requirements cited in this Complaint;
  2. Order TOTAL to take appropriate measures to mitigate the effects of its violations;
  3. Assess civil penalties against TOTAL for each of the violations alleged herein;
- and

4. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

Date:

3/29/07

MATTHEW J. MCKEOWN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: March 8, 2007

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